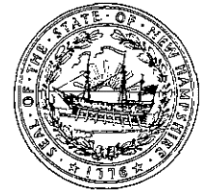




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



RAN Engineering Corp.
202 Spruce Street
Winchendon, MA 01475

NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 03-014

July 29, 2003

I. INTRODUCTION

1. This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division ("the Division") to RAN Engineering Corp., pursuant to RSA 125-C:15. The Division is proposing that fines totaling \$1,750 be imposed against RAN Engineering Corp. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, P.O. Box 95, Concord, NH 03302.
2. RAN Engineering Corp. is a Massachusetts corporation having a mailing address of 202 Spruce Street, P.O. Box 276, Winchendon, MA 01475.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIM(S)

1. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env-A 100 *et seq.*
2. Pursuant to RSA 125-C:15,I-b(b) the Commissioner of DES is authorized to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-C and rules promulgated pursuant thereto.
3. RSA 125-C:6, VII authorizes Division personnel to enter "at all reasonable times in or upon any private or public property, except private residences, for the purpose of inspecting or investigating any condition which is believed or be either an air pollution source or in violation of any rules or orders promulgated hereunder".
4. Env-A 1001.03 allows only certain open burning without authorization from DES. Specifically, Env-A 1001.03(c)(4) allows the burning of untreated wood from the construction or demolition of a building, provided that such burning shall be done in an area that shall be specified and approved by officials having jurisdiction over open burning.

5. Env-A 101.54 defines "brush" as tree tops, limbs, saplings and tree cuttings that are five inches in diameter or less.
6. Env-A 101.286 defines "untreated wood" as any timber, board or sawn dimensional lumber, which has not been treated, coated or preserved.
7. RAN Engineering Corp. ("RAN") operated a fabricating and machining company located at Route 119 East, Rindge, NH (the "Property").
8. On December 9, 2002, RAN notified the Rindge Fire Department ("RFD") that it would be burning pallets and brush at the Property the following day.
9. On December 10, 2002 the RFD went to the Property to inspect the burn pile. Upon inspection, RFD discovered a large quantity of non-conforming material being burned at the Property. RFD extinguished the fire and notified the Division.
10. On December 11, 2002 Division personnel went to the Property and met and spoke with Mr. Jay Robbins, a vice-president at RAN. Division personnel inspected, observed and photographed the burn pile. Visible in the burn pile was a large quantity of non-conforming material including charred plywood, charred sections of utility poles, logs over 5" in diameter, charred and melted vinyl siding, a melted computer, charred and melted vehicle batteries, a kitchen sink, a burned gasoline pump, and assorted metals. Mr. Robbins told Division personnel that he had ignited the pile in an attempt to clean up the Property prior to selling it.
11. During the December 11, 2002 inspection, the Division inspector explained to Mr. Robbins what materials could be burned. Mr. Robbins arranged to have a 30-yard roll-off brought to the Property in order to clean up and dispose of the remaining ash and non-conforming material.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. RAN Engineering Corp. violated Env-A 1001.03(c)(4) by burning non-conforming materials on the Property on December 10, 2002 ("Violation 1"). Pursuant to RSA 125-C, the Division has determined Violation 1 to be a major deviation from the requirements with moderate potential for harm. RSA 125-C:15, I-b specifies a fine range of \$1,251 to \$1,750. The Division is seeking a fine of \$1,750 for this violation.

The total fine being sought is \$1,750.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, RAN Engineering is required to respond to this notice. Please respond no later than August 29, 2003, using the enclosed blue form as follows:

1. If RAN Engineering plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to the DES Legal Unit at the address noted on the form.

2. If RAN Engineering chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If RAN Engineering wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate RAN Engineering's interest in settling.

RAN Engineering is not required to be represented by an attorney. If RAN Engineering chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If RAN Engineering wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled, RAN Engineering must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If RAN Engineering does not notify the DES Legal Unit in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 202.08.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that RAN Engineering committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that RAN Engineering committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

- ☆ Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that RAN Engineering proves, by a preponderance of the evidence**, applies in this case:
 1. The violation was a one-time or non-continuing violation, **and** RAN Engineering did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** RAN Engineering did not benefit financially, whether directly or indirectly, from the violation.
 2. At the time the violation was committed, RAN Engineering was making a good faith effort to comply with the requirement that was violated.

3. RAN Engineering has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
5. Other information exists which is favorable to RAN Engineering case that was not known to the Division at the time the fine was proposed.

★★★★★ IMPORTANT NOTICE ★★★★★

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is RAN Engineering's opportunity to present testimony and evidence that RAN Engineering did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If RAN Engineering has any evidence, such as photographs, business records or other documents, that RAN Engineering believes show that RAN Engineering did not commit the violation(s) or that otherwise support RAN Engineering's position, RAN Engineering should bring the evidence to the hearing. RAN Engineering may also bring witnesses (other people) to the hearing to testify on behalf of RAN Engineering.

If RAN Engineering wishes to have an informal meeting to discuss the issues, RAN Engineering must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.

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Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us/des). If RAN Engineering has any questions about this matter, please contact the DES Legal Unit at (603) 271-6330.

COPY

Pamela G. Monroe
Compliance Bureau Administrator
Air Resources Division

Enclosure: Env-A 1000

cc: Mark Harbaugh, DES Legal Unit
Susan Alexant, DES Hearings and Rules Attorney

***** RETURN THIS PAGE ONLY *****

RAN ENGINEERING IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.

PLEASE RESPOND NO LATER THAN AUGUST 29, 2003.

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of RAN Engineering,

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I request to have a **prehearing conference** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of RAN Engineering,

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$1,750 paid to "Treasurer, State of New Hampshire" is enclosed. *

Pursuant to Env-C 203.05 please provide the following information:

Signature Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY TO:

**Michael Sclafani, Legal Assistant
Department of Environmental Services ~ Legal Unit
6 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095**

* If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.